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FENNEMORE CRAIG

A Professional Corporation

Timothy Berg

Theresa Dwyer

Darcy Renfro

3003 North Central Avenue

Suite 2600

Phoenix, Arizona 85012

Telephone (602) 916-5000

Attorneys for Qwest Corporation

## BEFORE THE ARIZONA CORPORATION COMMISSION

RESIDENTS OF PRESCOTT VALLEY,  
TRACY AND TROY DENTON, ET. AL.,

Complainants,

vs.

QWEST CORPORATION,

Respondent.

Docket No. T-01051B-02-0535

**QWEST CORPORATION'S MOTION  
FOR RECONSIDERATION OF  
PROCEDURAL ORDER AND MOTION  
FOR PROTECTIVE ORDER****EXPEDITED REVIEW REQUESTED****I. MOTION FOR RECONSIDERATION OF MAY 14, 2003 PROCEDURAL ORDER**

Qwest Corporation ("Qwest") respectfully moves for reconsideration of the Procedural Order issued in this docket on May 14, 2003. Qwest seeks reconsideration of the portion of the Procedural Order directing Staff to prepare a Report by June 9, 2003 that "could arise should the Commission eventually rule in favor of the Complainant(s) in this matter...." The Report requests, among other things, a comparison between Qwest and Midvale Telephone Exchange, Inc. ("Midvale") of the services and costs of providing service to each individual Complainant. In so doing, the Hearing Division has unnecessarily expanded the scope of this docket, inappropriately required Staff to provide information outside the scope of its stated level of participation, and required additional discovery that is not reasonably calculated to lead to the discovery of admissible evidence.

1           The purpose of this docket is to determine (1) whether Qwest has violated any provision  
2 of law, any order or rule of the Commission; and (2) if so, whether Qwest has a resulting  
3 obligation to provide service to the Complainants outside of its established service area. *See*  
4 A.R.S. § 40-246(A). The relevant issues are admittedly mixed issues of fact and law. However,  
5 the relevant facts go to whether Qwest acted in a manner that obligates it to serve individuals  
6 outside of its service territory, specifically individuals in Township 15 North, Range 1 West,  
7 Section 11 ("Section 11" or "Complainants' area"). In expanding the docket to include issues of  
8 which provider can best serve the Complainants and at what price, the Commission presupposes  
9 that (1) Qwest has an obligation to provide service outside of its service territory and (2) the  
10 relative cost of providing service is relevant to this docket.

11           On January 30, 2003, Qwest moved to stay these proceedings until resolution of  
12 Midvale's application to extend its service area to include Section 11 in Docket No. T-02532A-  
13 03-0017. The basis for this Motion was that if Midvale were granted its requested extension, the  
14 Complainants' complaints would be moot. To the extent relevant to these complaints, Midvale's  
15 request to serve Section 11 shows the requisite willingness to provide service to this area, which  
16 meets the legal standards under 47 U.S.C. § 213(e)(3), and is consistent with previous  
17 Commission Decisions. *See, e.g.,* Decision No. 64828, Docket No. E-1051B-97-130, *Bryan &*  
18 *Pam Dellinger v. Qwest Corporation*. How much Midvale or Qwest would charge, what services  
19 they would provide and at what price are not relevant whatsoever to determination of these  
20 issues.<sup>1</sup>

21           Staff has indicated previously that it believes the Commission has authority to force  
22 Qwest to provide service outside of its service territory. *See* Oct. 21, 2002 Reply to Qwest's  
23 Answer to the consolidated Complaints. In addition to reliance on 47 U.S.C. § 213(e)(3)  
24 discussed above, Staff relied on *Tonto Creek Estates Homeowners Ass'n v. Arizona Corp. Com'n*,

25 \_\_\_\_\_  
26 <sup>1</sup> Qwest does and would provide service in accordance with the terms and conditions set forth in its  
Tariffs on file at the Commission.

1 177 Ariz. 49, 864 P.2d 1081 (App. 1993) and *In the Matter of the Application of Arivaca*  
2 *Townsite Coop. Water Co. for an Extension of its Certificate of Convenience and Necessity*,  
3 Decision No. 59546, to support its assertions.<sup>2</sup> The comparison of Qwest's and Midvale's rates  
4 are equally irrelevant to the analysis under this authority because such a determination turns on  
5 whether or not Qwest intended, desired or held itself out as providing service to the  
6 Complainants. Whether Qwest can be forced to serve outside of its service territory has nothing  
7 to do with how its rates and services compare to Midvale - a provider that has actually expressed  
8 a desire to provide service to the Complainants.<sup>3</sup>

9 Additionally, the Procedural Order expands unnecessarily the scope of discovery, which  
10 could cause further delay and strain Staff's resources. Staff has stated on the record that it does  
11 not intend to take a position in this matter and does not intend to call any witnesses to testify at  
12 hearing. *See, e.g.*, 12/16/02 Transcripts at 44:16; 25:18-25; 26:8-11.<sup>4</sup> To underscore the lack of  
13 relevancy of the requested rate comparison information, all parties have indicated that no further  
14 discovery was needed to proceed to hearing. *See, e.g.*, 4/21/02 Transcripts at 13:13-23. In fact, it  
15 appeared that at the March 3, 2003 Procedural Conference a discovery deadline was to be set 30  
16 days prior to hearing, as opposed to 10 days prior to hearing due to the number of complainants  
17 and breadth of issues involved. *See* 3/3/03 Transcripts at 32:6-14. In response to the May 4<sup>th</sup>  
18 Procedural Order, however, Staff has now sent a fourth set of data requests that it believes  
19 necessary to provide the comparison Report as ordered. The responses are due on May 30<sup>th</sup>, just  
20 over two weeks prior to hearing.<sup>5</sup> (A copy of Staff's Fourth Set of Data Requests is attached as

21 \_\_\_\_\_  
22 <sup>2</sup> Both cases relate to the provision of water services in a monopoly setting.

23 <sup>3</sup> In addition to the fact that the water company at issue had been providing service to the Petitioner's  
24 (analogous to Complaints here) property for 17 years, one consideration in the *Arivaca* Decision was the  
25 fact that the property at issue would have been "sandwiched" the between the two already-served parcels,  
26 resulting in no other provider applying to serve the lone parcel. There is no similar circumstance present in  
this docket. Midvale *wants* to provide service to the Complainants.

<sup>4</sup> During the March 3, 2003 Procedural Conference, Staff recommended that the Complainants look at the  
two companies tariffs to obtain additional information in determining whether to move forward with this  
Complaint. *See* 3/3/03 Transcripts at 13:15-23.

<sup>5</sup> Initially, Staff sent its Fourth Set to Qwest and First Set to Midvale on May 14. These Requests,

1 Exhibit A). Staff had finished its discovery months ago. Moreover, Staff does not carry the  
2 burden of proof in this matter; Complainants carry the burden of proof.<sup>6</sup> Requiring such a report  
3 is not only irrelevant and broadens the scope of this proceeding, but it inappropriately requires  
4 Staff to obtain and dispense information that should be pursued by the bearer of the burden.

5 For the reasons stated above, Qwest respectfully requests the Commission to reconsider its  
6 May 14 Procedural Order directing Staff to file a comparison Report.

7 **II. MOTION FOR PROTECTIVE ORDER**

8 Pursuant to Rule 26 (c) of the Arizona Rules of Civil Procedure and A.A.C. R14-3-101,  
9 Qwest requests that the Commission grant a Protective Order precluding Staff from discovering  
10 the information set forth in its Fourth Set of Data Requests.

11 On May 15, 2003, Qwest received Staff's Fourth Set of Data Requests. The data requests  
12 seek information from Qwest regarding: (1) its costs and charges required to provide service to  
13 the Complainants; (2) the type of service that would be provided to the Complainants by Qwest;  
14 and (3) a timeline as to the initiation of telephone service to Complainants. These data requests  
15 were revised on May 19, 2003 to include questions relating to Qwest's proposed plans, costs and  
16 timetables for providing service to not only the Complainants but to various portions of Section  
17 11. Staff sent an identical set of data requests on May 15 and an identical set of revised data  
18 requests on May 19 to Midvale. Notwithstanding any potential objections or requests to extend  
19 the time for answering, those responses would be due on May 30, approximately two weeks prior  
20 to the June 17, 2003 hearing. These data additional data requests are not relevant, and are highly  
21 technical and speculative, potentially causing further delay.

22  
23 however, were amended and sent to the parties on May 19.

24 <sup>6</sup> It should be noted that well-established law mandates that where parties conduct their cases *in propria*  
25 *persona* they are entitled to no more consideration than if they had been represented by counsel, and they  
26 are held to the same familiarity with required procedures and the same notice of statutes, rules, and legal  
principals as would be attributed to a qualified member of the bar. See *Ackerman v. Southern Arizona*  
*Bank and Trust Co.*, 39 Ariz. 484, 486, 7 P.2d 944 (1932), *Higgins v. Higgins*, 194 Ariz. 266, 270, 981  
P.2d 134, 138 (App. 1999).

1           The Commission should grant Qwest's motion for a protective order because the data  
2 requests are outside the scope of this proceeding and not likely to lead to the discovery of admissible  
3 evidence as explained in more detail in Qwest's Motion to Reconsider above. A hearing has been  
4 scheduled for June 17, 2003 to determine whether Qwest has an obligation to provide telephone  
5 service to the Complainants. Like all telecommunication providers in Arizona, Qwest provides  
6 telecommunications services within its designated exchange boundaries filed for public display  
7 with the Commission. The Complainants live in an area that is outside of those exchange  
8 boundaries and assert that, as a result of its past actions, Qwest is obligated to now provide them  
9 with service. Although Qwest has admitted (and previously reported to the Commission) that it  
10 inadvertently provided service to two addresses within Section 11, Qwest has not manifested the  
11 requisite intent to serve nor held itself out as a provider of service to this area. Therefore, Qwest  
12 is not obligated to provide service to the Complainants or others in Section 11. Qwest further  
13 asserts that the Commission lacks authority to force a telecommunication provider to serve  
14 customers outside of its established service territory. Staff's Fourth Set of Data Requests to  
15 Qwest is not calculated to lead to the discovery of evidence relevant to these issues and, therefore,  
16 should be precluded.

17           The Arizona Rules of Civil Procedure advocate a policy of full disclosure between parties.  
18 The purpose of discovery is to "provide a vehicle by which one party may be fairly apprised of  
19 the other's case and be prepared to meet it if he can." Kott v. City of Phoenix, 158 Ariz. 415,  
20 418, 763 P.2d 235, 238 (1988) (citing Watts v. Superior Court, 87 Ariz. 1, 347 P.2d 565 (1959)).  
21 Discovery promotes the efficient and speedy disposition of a lawsuit, minimizes surprise, and  
22 prevents a hearing or trial from becoming a guessing game. See Cornet Stores v. Superior Court,  
23 108 Ariz. 85, 86, 492 P.2d 1191, 1193 (1972). Discovery is not, however, a vehicle utilized to  
24 address issues not within the scope of a particular proceeding, particularly if that discovery will  
25 serve only to clog the system and confuse the issues.

26           Complainants have had ample opportunity to request information from Qwest relevant to

1 their complaints and have stated that no additional discovery is necessary to prove their claims.  
2 See, e.g., 4/21/02 Transcripts at 13:13-23. Further, Staff has stated that it will not take a position  
3 in this matter. See, e.g., 12/16/02 Transcripts at 44:16; 25:18-25; 26:8-11. Additional data  
4 requests are not necessary, not relevant and will only serve to further prolong resolution these  
5 claims. Therefore, the Commission should grant Qwest's request for protective order.

6 Given the timing of the June 17, 2003 hearing, Qwest respectfully requests that the  
7 Commission review these matters on an expedited basis.

8 DATED this 22<sup>nd</sup> day of May 2003.

9 FENNEMORE CRAIG, P.C.

10  
11 By   
12 Timothy Berg  
13 Theresa Dwyer  
14 Darcy Renfro  
3003 North Central, Suite 2600  
Phoenix, Arizona 85012  
Attorneys for Qwest Corporation

15 ORIGINAL +13 copies filed this  
16 22<sup>nd</sup> day of May, 2003:

17 Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
18 Phoenix, AZ

19 COPY delivered this 22<sup>nd</sup> day of May, 2003:

20 Christopher Kempley  
Legal Division  
21 ARIZONA CORPORATION COMMISSION  
1200 West Washington  
22 Phoenix, AZ

23 Philip J. Dion III  
Hearing Division  
24 ARIZONA CORPORATION COMMISSION  
1200 West Washington  
25 Phoenix, AZ  
26

1 David M. Ronald  
Legal Division  
2 ARIZONA CORPORATION COMMISSION  
1200 West Washington  
3 Phoenix, AZ

4 COPY mailed this 22<sup>nd</sup> day of May, 2003:

5 Ernest and Sherry Thompson  
P.O. Box 27016  
6 Prescott Valley, AZ 86312

7 Troy and Tracy Denton  
PO Box 26343  
8 Prescott Valley, AZ 86312

9 Bryant and April Peters  
PO Box 27302  
10 Prescott Valley, AZ 86312

11 John J. and Patricia J. Martin  
PO Box 25428  
12 Prescott Valley, AZ 86312

13 Arnold and Tammy Fatheree  
PO Box 26268  
14 Prescott Valley, AZ 86312

15 Tommy L. White  
PO Box 27951  
16 Prescott Valley, AZ 86312

17 Sandra Rodr  
PO Box 25996  
18 Prescott Valley, AZ 86312

19 Kirk and Bobbi Limburg  
PO Box 27683  
20 Prescott Valley, AZ 86312

21 Susan Bernstein  
7835 East Memory Lane  
22 Prescott Valley, AZ 86312

23 By:   
24  
25  
26